

IN SENATE OF THE UNITED STATES.

MAY 29, 1848.

Submitted, and ordered to be printed.

Mr. YULEE made the following

REPORT:

The Committee on Naval Affairs, to whom was referred the petition of Abel Gregg, report:

Abel Gregg, a sergeant in the marine corps, asks extra compensation for certain alleged services. His case is correctly stated in the accompanying letter from the Fourth Auditor, and the committee, being of opinion that the petitioner is not entitled to the allowance he seeks, ask to be discharged from the further consideration of the petition.

TREASURY DEPARTMENT,
Fourth Auditor's Office, January 28, 1848.

SIR: In reference to the memorial of Abel Gregg, which you enclosed to me, in which he prays to be allowed additional pay, at the rate of fifteen cents per diem and the value of a daily gill of whiskey, for his services as messenger to the commandant and staff of the marine corps, from the 17th of September, 1823, to the 29th of April, 1826; from the 1st of September, 1828, to the 7th of February, 1832, and from the 24th of April to the 31st of December, 1832, I have the honor to remark that the act upon which the claim of the memorialist is founded directs that, "whenever it shall be found expedient to employ the army at work on fortifications, in surveys, or cutting roads, and other constant labor, of not less than ten days, the non-commissioned officers, musicians, and privates so employed shall be allowed fifteen cents and an extra gill of whiskey or spirits each per day while so employed." It is hard to suppose that this act, which speaks only of the employment of the army as a collective body, and gives, as examples of the labor alluded to, the construction of fortifications, the making of surveys, and cutting of roads, was designed to be applicable to half a dozen clerks separately employed for five or six hours a day in the staff offices, or to a solitary messenger of a commanding officer; and it is difficult to perceive why an extra gill of whiskey should be

thought necessary for persons so employed. The law has received such a construction, however, for many years from the bureaux of the War Department, and the estimates have been framed accordingly; but the construction was not adopted by the Navy Department, as respects the messenger of the marine corps, until subsequently to the period embraced by the claim of the memorialist. As the terms used in the act are technical, great stress was laid upon the practical construction which the War Department had placed upon them, by Attorney General Butler, in the opinion to which the memorialist refers; and when the same question was referred by the Secretary of the Navy, at a much later period, to Attorney General Nelson, he stated that, whatever doubts might have existed at any time as to the true construction of the act of Congress, the practice of the department, sanctioned by the action of Congress in making appropriations conformably to the estimates, would justify the allowance.

At the period to which the claim of the memorialist relates, neither of these grounds existed, for such a construction had not been given to the act by the Navy Department as to embrace the services of the messenger of the marine corps; nor was any provision made for this extra allowance to him in the estimates or appropriations. The department did not consider him as entitled to the allowance until it was introduced into the estimates in 1833; nor did the commandant of the corps, for he did not order his name placed, as it should in that case have been, upon the roll of mechanics and laborers; nor did he himself believe that he was entitled to it, as is manifest from his not presenting his claim until years after the latest period to which it refers.

If he cannot rely upon a strict legal right to the bounty in question, much less, I think, can he depend upon any equity in his case. His principal, if not his whole, duty has been to pass once a day between the head-quarters of the corps, in this city, and the Navy Department and the city post office, which can scarcely be supposed so much more arduous than the ordinary military service of a sergeant as to give him an equitable claim to the same extra compensation which he would receive if he were employed as a daily laborer in the erection of fortifications or the cutting of roads.

The papers which you enclosed to me are herewith returned.

I have the honor to be, sir, very respectfully, your obedient servant,

A. O. DAYTON.

To the Hon. D. L. YULEE,

*Chairman of the Committee on Naval Affairs,
United States Senate.*